

28) [Bureau's P.F.F. para. 33.] The Bureau is attempting to employ a faulty premise that the Sumpters received Commission-related mail due only to the fact that Norma previously signed applications. The facts on the record simply do not support this statement. None of the "Commission-related" mail was ever addressed to the Sumpters collectively. Each piece of "Commission-related" mail in the record is addressed directly to a specific individual member of the family. As stated *infra.*, the Bureau's logic is woefully flawed.

56. *Although both Melissa and Jennifer had signed applications in the early 1990s, it appears that the licenses ultimately issued were only to Norma. (Tr. 1058-59; 1071, 1073; 1315; 2092; EB Ex. 42; EB Ex. 43; EB Ex. 44; EB Ex. 45, p. 1; EB Ex. 52, p. 1; EB Ex. 55, p. 1) [Bureau's P.F.F. para 33.]* Nothing in the Bureau's citations support its statement that what Jennifer and Melissa signed in the early 1990's were applications. Although Melissa testified that she signed an application in the "early '90s", she further testified that she did not review the form before she signed it and was only "told that's what it was." (Tr. at 1315-1316.) The Bureau offers no evidence in the form of copies of the applications or correspondence from the FCC which would allow the Bureau to claim that what Jennifer and Melissa signed were applications. Melissa did not "get any other papers regarding that application or license." (Tr. at 1316.) However, assuming *arguendo*, that Jennifer and Melissa executed applications in the early 1990s, what happened to the documents? If they were filed, the Bureau would have been able to produce a record of that event. If they were not filed, then such decision to withhold the applications cuts against the Bureau's attempt to demonstrate some ongoing abuse of the

Commission's processes by Defendants. Defendants aver that Jennifer's and Melissa's claims are a convenient vehicle to explain the receipt of Commission-related mail, however, even for that purpose the claims fail. Taken further, if filed, the applications were obviously not granted. So, why, as alleged by Jennifer and Melissa, would they have received Commission-related mail that might later be confused with mail regarding the 1996 applications. Based on simple logic and a preponderance of the evidence, the Sumpter story just doesn't make sense and, thus, neither does the Bureau's proposed finding of fact.

57. *Consequently, the Sumpters paid little attention to Commission-related mail received as a result of the 1996 applications, and they continued to forward all Commission-related mail they received to DLB, in accordance with Ronald's and Patricia's previous instructions. (Tr. 1053-54, 1056, 1085-86; 1374-75; 1844-45, 1953-56; 2078-79, 2125, 2131) [Bureau's P.F.F. para. 33.]* The Bureau inaccurately states that the Sumpters forwarded Commission-related mail to DLB in accordance with Ron and Pat's instructions. The record indicates that it was Jim's instructions to do so. (Tr. 1954.)
58. *The Sumpters did not learn about the 1996 licenses until late 1997 and had no involvement with "their" 1996 licenses until they executed documents to transfer the licenses out of their names, (Tr. 1065-68, 1117; 1320, 1322, 1344-45, 1348-50, 1378-79, 1436; 1762-65, 1783-89, 1791, 1819, 1845, 1964-65; 2029, 2053, 2059-65, 2072-74, 2099-2103; EB Ex. 35, p. 30; EB Ex. 37, pp. 1-3; EB Ex. 45, p. 1-2; EB Ex. 46; EB Ex. 52, pp. 1, 10; EB Ex. 55, p. 2-3, 14).* [Bureau's P.F.F. para. 33.] This sentence intermingles a conclusion of law into the Bureau's proposed finding of fact. Furthermore, the Bureau

continues to be highly selective in the facts it chooses to include in its pleading. The Bureau disregards contradictory testimony supplied by both Ron, (Tr. at 414-427), and Pat, (Tr. at 818-821), as to the Sumpter family knowledge and participation in the application process. The Bureau also neglects to address documentary evidence in the form of the client copies, (EB Ex. 19 at 200, EB Ex. 19 at 208, EB Ex. 19 at 216), and letters to Ron and Pat, (EB Ex. 47, EB Ex. 53, EB Ex. 56), that otherwise demonstrate the Sumpters' knowledge and involvement.

59. Paragraph 33, taken together, demonstrates that the Bureau has either failed to think through its propositions, or that it has intentionally ignored the facts. According to the Bureau, the Sumpters claim that none of them remembered receiving Commission-related mail, except that addressed to Norma, until sometime in 1997. However, if such mail was received, they paid no attention to it because Jennifer and Melissa had executed applications in the early 1990s. The Sumpters' claims and, thus, the Bureau's proposed findings of fact simply do not withstand scrutiny or logic. Ignoring for a moment the content of the mail, the names and addresses on the outside of the mail would be sufficient to alert the Sumpters. Jennifer received mail at her new apartment, addressed to her married name. (Tr. at 1055-1057, 1081-1082.) She could not have, therefore, reasonably believed that Commission-related mail addressed in such a manner arose out of an alleged application filed when she lived elsewhere with a different last name. Mail was received in the name of Jim Sumpter, yet, he claimed that he did not participate in the preparation of an application. That mail was received addressed to Jim Sumpter and, thus, would have reasonably alerted even a casual observer. In sum, the Sumpters'

testimony simply defies logic, and the Bureau's reliance upon that testimony for the creation of proposed facts is in obvious error.

60. *The Sumpters also did not authorize or participate in the preparation of the "Opposition" filed with the Commission on November 25, 1997 by counsel purporting to represent them. (Tr. 1935, 1937; 2056-57; 1323; EB Ex. 34, p. 6; EB Ex. 37, pp. 2, 14-19; EB Ex. 55, p. 3) Although Jim Sumpter received a faxed copy of the draft pleading on November 23, 1997, he was not asked for, and did not give, his approval of the document. (Tr. 2054-58). [Bureau's P.F.F. footnote 8.] These statements are contrary to the record. It is evident that Jim Sumpter authorized and approved the filing of the Opposition for his entire family. Jim is the recognized leader of the Sumpter family. (Tr. at 1614-1615, 1967). Ron faxed Jim a copy of the Draft Opposition. Jim believed Ron did so to "relieve [Jim's] anxiety about the situation, that [Ron] was going to take care of it." (Tr. at 1767.) Jim read the draft Opposition, "but not line by line". (Tr. at 1850.) Jim also testified that he did not care how Ron took care of the allegations raised in the Net Wave petition, as long as Ron took care of those allegations, and "if this opposition would take care of it, [Jim] was just as happy to have Ron do it and file it." (Tr. at 1854.) This is yet another instance where the Bureau fails to recognize facts that weaken its assertions.*
61. *Jennifer first learned about the November 25, 1997, pleading from Mr. John McVeigh, whom the Sumpters retained to represent them in this matter. (EB Ex. 55, p. 3).* [Bureau's P.F.F. footnote 8.] The Bureau incorrectly states that Jennifer first "learned" of the Opposition from Mr. John McVeigh. The declaration relied on by the Bureau merely indicates that Jennifer first "saw" the Opposition from Mr. McVeigh. (EB Ex. 55 at 3.)

The fact that she had not seen the Opposition until this time does not support a finding that she did not have prior knowledge of the document. Nor does the Bureau note that the only reason that Jennifer might not have seen the document until sometime after its filing is because Jim chose not to show it to her.

62. *Melissa first saw that pleading during, or immediately prior to, the hearing. (Tr. 1323).* [Bureau's P.F.F. footnote 8.] This fact, if true, is somewhat disturbing. It reveals that Melissa was not shown an important document by her father, Jim. It further shows that Melissa's counsel did not show her a copy of the pleading. Thus, to complete the record, the Court may accept that Melissa does what people tell her to do, without further question or examination, and that her testimony is suspect due to its lack of independence.
63. *[Constructing the T-band stations] include[d] not only the Sumpters' stations but also the ones licensed to O.C. Brasher, Carolyn Lutz, David Brasher, and D.L. Brasher. (EB Ex. 17, pp. 2-3)* [Bureau's P.F.F. footnote 9.] The Bureau's proposed fact results in a contention by the Bureau that the Ruth Bearden station was never constructed, since it was not mentioned as one of the constructed facilities. It also results in a contention that Norma and Melissa's stations were constructed. Defendants concur and further note that the Bureau did not show that either Norma or Melissa's stations were operational after 1999, thus lending further support to Defendants' testimony that those stations were shut off pursuant to Norma's instructions.
64. *Ronald and Patricia purchased the repeaters and leased them to DLB. (Tr. 136).* [Bureau's P.F.F. para. 34.] The Bureau omitted the fact that Ron and Pat's actions were

in strict conformity with those directions given by Jim. Further, since the Bureau has provided an incorrect citation to the record with regard to the leasing of the repeaters to DLB, the resulting statement is reduced to improper testifying by the Bureau. Finally, the Bureau does not note the lack of a written lease, therefore, DLB's interest in the equipment is, at best, a tenancy by will.

65. *Other DLB personnel helped with construction as part of their duties for DLB. (Tr. 128-131, 136-38; 871).* [Bureau's P.F.F. para. 34.] The Bureau's statement is vague and lacks specificity as to what kind of "help" the personnel provided and what their "duties" entailed.
66. *Anyone wishing to enter the building needs the combination to the lock. (Tr. 643).* [Bureau's P.F.F. para. 34.] The use of an incorrect citation undercuts the acceptability of the proposed finding of fact and reduces the statement to improper testifying by the Bureau.
67. *The Sumpters were not consulted regarding the location of "their" stations and did not know when, where, how or if "their" stations were constructed. (Tr. 1065-68; 1344-45; 1784-89; 2099, 2101).* [Bureau's P.F.F. para 34]. The citations relied on by the Bureau fail to support the Bureau's contentions. In all, there are four Sumpters in this matter. However, the Bureau fails to recognize this and continues to collectively compile facts that rely on the testimony of only one Sumpter and then apply that testimony to the entire group. For instance, the Bureau accurately cites to Norma's testimony where she states that she was not consulted. However, the Bureau's citation to Jennifer's testimony only indicates that she did not know "when" her station was constructed. (Tr. at 1065-1068.)

Nothing cited to in her testimony indicates that she was not consulted, or that she lacked knowledge of where, how or if her station was constructed. Furthermore, the citation proffered by the Bureau to Jim's testimony does not make any mention with regards to his knowledge of the construction of his station. (Tr. at 1784-1789.) In addition to the Bureau's failure to employ citations to supportive testimony, the Bureau has omitted contradictory evidence in the form of the face of the applications and licenses which clearly showed the location of the facilities. For the Bureau's statement to be accepted as fact, the Bureau would have to show, based on a preponderance of the evidence, that the Sumpters never saw the applications, client copies, licenses mailed to each, or any other document which showed the location of the facilities. The Bureau would further need to explain why Ron corresponded with Norma regarding a relocation of her 900 MHz facility, including specific information regarding the nature of the modification to place the facility at another location, yet, did not extend the same courtesy regarding the T-band facility. The Bureau has not shown the above necessary premises, therefore, its statement should fail as a proposed finding of fact.

68. *DLB paid the costs associated with the licensing and operation of the stations. (Tr. 292, 446-47; 817).* [Bureau' P.F.F. para. 35.] In fact, Ron and Pat paid for many of the filing fees and application costs associated with licensing, not DLB. (EB Ex. 3 at 2, EB Ex. 9 at 2, EB Ex. 35 at 2, EB Ex. 41 at 2, EB Ex. 49 at 1, EB Ex. 54 at 1, EB Ex. 57 at 1.) Additionally, according to contradictory testimony, some of the non-Brasher licensees paid for FCC filing fees for their individual stations. Thus, the Bureau's statement is inaccurate.

69. *Ronald and Patricia rent space for the repeaters using their personal funds, and DLB pays rent to the Brashers for use of the repeaters. (Tr. 510, 1574).* [Bureau's P.F.F. para 36.] The Bureau misstates the facts in its citation to the transcripts on page 510. The testimony, in fact, states that the rent for the tower site is paid for out of the Brasher account, which is a "company account", not through personal funds. (Tr. at 510.) The Bureau further omits the fact that this method of financing was concocted by Jim.
70. *DLB personnel load customers on the stations and bill the customers. (Tr. 162-68; 871-72; EB Ex. 17, p. 6).* [Bureau's P.F.F. para 36.] The Bureau reaches beyond the record in its assertion that DLB personnel load customers on the stations and bill the customers. The citations relied upon by the Bureau only reveal the fact that Mrs. Lutz performed invoicing as part of her job. There is no record testimony cited to by the Bureau in support of its assertion that DLB personnel load customers on the stations.
71. *DLB did not compensate the Sumpters in any way for the use of "their" licenses. (Tr. 170; 1065-68, 1097; 1345; 1791-94; 2102).* [Bureau's P.F.F. para 36.] This is a conclusion of law, and therefore not a proper factual assertion on the part of the Bureau. Furthermore, the Bureau's reliance on Tr. 170 is improper in that it mis-characterizes the testimony given by Ron. The testimony at Tr. 170 indicates that "there have been no ... no payments have been made back, cash payments have been made back to any of the licensees." This in and of itself does not support the Bureau's statement that no compensation was given. Although the Bureau addresses Ron's testimony in the next paragraph regarding the monies owed DLB for Jennifer's use of the first car radio-phone, the Bureau neglects Ron's testimony that it was Norma's suggestion that the Sumpters

apply for the 1996 T-band licenses to make up for the outstanding debt. (Tr. at 456.)

Norma mentioned that obtaining the licenses would give her and Jim a chance to “repay the debt that they had on the other phone system... the money that they did not pay on the 800 and the mobile equipment that [Metroplex] furnished them and they used for free.” (Tr. at 403.) Norma “indicated...they wanted to clear...that debt...clear the air of the radio back bills.” (Tr. at 407.)

72. *In this regard, Ronald acknowledged that he did not consider Jennifer’s use of a car radio-phone supplied by DLB as payment for DLB’s use of the Sumpter licenses. (Tr. 456; see also 1794). [Bureau’s P.F.F. para 36.]* Ron testified that it was Norma’s suggestion that the Sumpters apply for the licenses in order to pay off monies that the Sumpters owed DLB. (Tr. at 456.) Ron would not assume that these licenses somehow paid off the debt owed DLB, “because there would never be an issue presented by Pat and Norma.” (Tr. at 456.) However, the Bureau failed to ask this same question of Pat, who as President and majority shareholder at the time, had the “final say.” (Tr. at 771.) Pat’s testimony regarding this matter would most certainly be relevant, and without it, the Bureau’s attempts to show that no compensation was given for use of the Sumpter licenses lacks the necessary piece of evidence to establish this assertion as fact.

73. *According to Jim, while he was DLB’s accountant, he only knew about the aggregate revenue from DLB’s repeater business and had no knowledge regarding the specific fees, costs and profits assigned to that repeater business. (Tr. 1984-90). [Bureau’s P.F.F. para. 37.]* The statement is defective in two regards. First, the Bureau is merely expressing its paraphrased understanding of the testimony given, without proposing a

finding of fact. Second, the errant citation reduces the proposed finding of fact to improper Bureau testimony. What is further telling, however, is the Bureau's proffer of this statement without relating the content to the activities of Jim Sumpter who prepared tax forms on behalf of DLB and the Brashers. (Tr. at 84-85, 757, 1739-1740.) Jim would need to know, with specificity, all information related to purchases, sales, costs, leases, service, etc. for the purpose of preparing tax forms and the associated schedules. For examples, Jim could not prepare an IRS Form 179 for depreciation of purchased equipment unless he knew the cost of that equipment and the date upon which it was obtained. He could not identify and properly segregate passive and earned income, for the purpose of determining liability for social security or self-employment taxes. He would need to be specifically aware of equipment sales and sales of service to determine what level of sales tax was to be collected and paid to the State. In sum, the Bureau's statement is without testimonial, evidentiary or logical foundation, and any attempt by Jim to make minimal his knowledge of the specific financial conditions of Defendants is belied by that information which is required for the preparation of tax returns.

74. *Moreover, Jim declared that he has not received any financial information from DLB since resigning as DLB's accountant. (Tr. 1791) [Bureau's P.F.F. para. 37.]* The Bureau misstates the testimony given by Jim. Jim testified that he has not received reports regarding "repeater revenue" since his resignation as DLB's accountant. (Tr. at 1791.)
75. *He testified that he would not know whether the station licensed in his name was profitable because DLB's accounting system did not provide sufficient information. (Tr. 1788) [Bureau's P.F.F. para. 37.]* The Bureau inaccurately paraphrases Jim's testimony.

Jim testified that DLB did not do “cost allocation.” (Tr. at 1788.) Jim’s actual testimony also begs the question as to how one prepares depreciation schedules without cost allocation.

76. *Diane Brasher, currently the primary financial officer of DLB, and Steven Hill, DLB’s current accountant, both testified that they do not know how to determine the monthly revenues and total expenditures of a specific station. (Tr. 1514; 1577) [Bureau’s P.F.F. para. 37.] Ignoring for a moment the Bureau’s failure to propose a fact in this statement, or its failure to demonstrate that Diane is the “primary financial officer,” the sentence is also an errant reflection of the testimony. No where in Steven Hill’s testimony did he state that he didn’t know how to determine the monthly revenues and total expenditures of a specific station. In fact, the Bureau never asked a question regarding “monthly” revenues. And Mr. Hill’s testimony regarding determining costs was, “I would think that the rent expenditures would not be that difficult.” (Tr. 1514). His testimony regarding other financial compilations related to repeater revenues was, “I could probably figure out most of it.” (Tr. 1515). Similarly, the Bureau never asked Diane about monthly revenues. What the Bureau did ask Diane was, “If I wanted to find out the specific expenses paid for the operation of a particular station, how difficult is that to do?” and Diane responded, “I’m sure it could be done.” (Tr. 1577-78)*
77. *Additionally David admitted that none of the Sumpters have received any financial information from DLB since Jim withdrew as DLB’s accountant. (Tr. 987-88) [Bureau’s P.F.F. para. 37.] The Bureau is mis-characterizing the testimony given by David. David testified that the licensees are currently not provided information with regard to the*

operation of the stations. (Tr. at 987-988.) David does not state in his testimony that this has been the case since the time when Jim withdrew as DLB's accountant. However, regardless of David's testimony, the Bureau has again failed to propose a fact, opting instead to merely (mis)report the testimony given.

78. *DLB personnel operated and maintained the repeaters. (Tr. 871).* [Bureau's P.F.F. para. 38.] Given the Bureau's failure to cite properly to the record, the statement is reduced to the Bureau's offering of improper testimony. Additionally, the Bureau does not define the term "DLB personnel" which might include Lutz, Lewis, and the Sumpters, depending on the Bureau's interpretation.
79. *After learning about "their" licenses in November 1997, Jim contacted Ronald and Patricia and, on behalf of the Sumpters, requested that the Brashers immediately transfer all licenses out of the Sumpter names. (Tr. 1763-64, 1774-75; 2171; EB Ex. 37, p. 2; EB Ex. 39)* [Bureau's P.F.F. para. 39.] The Bureau mis-characterizes the testimony to which it cites in support of these facts. Jim contacted Ron, not both Ron and Pat. (Tr. at 1763.) Also, the testimony indicates that Jim requested his license be transferred, not that all licenses in the Sumpters' names be transferred. (Tr. at 1774-1775.)
80. *On November 29, 1997, the Sumpters each wrote Ronald and Patricia a letter, indicating that they knew nothing about the licenses in their names and again requesting that those licenses be transferred out of their names. (Tr. 1098; 1327; 1772-73; 2051-52; EB Ex. 40; EB Ex. 47; EB Ex. 53; EB Ex. 56)* [Bureau's P.F.F. para. 39.] The Bureau has inaccurately cited to the record. EB Ex. 40 is a letter written by Jim that was dated December 20, 1997. Also, each Sumpter did not write the letter. Uncontroverted

testimony shows that Jim wrote Norma's and Melissa's letter. (Tr. at 1064, 1371, 1382-1383, 2051-2052.) Jennifer thinks she "took the language and wrote [her] own." (Tr. at 1064.) Furthermore, the letters reveal that the Sumpter women had knowledge that an application was filed in each of their names. These letters each stated, "I knew that you had used my name but I understood that if a channel was awarded then you would immediately transfer it to your name." (EB Ex. 47, EB Ex. 53, EB Ex. 56.) Therefore, it is at odds with the record for the Bureau to assert that in executing these letters, the Sumpters indicated that they knew nothing about the licenses.

81. *In response to their requests, Ronald brought four 800A form letters, dated November 17, 1997, to Jim's office for each of the Sumpters to sign. (Tr. 1771-72; 2058-64; EB Ex. 34, p. 9; EB Ex. 37; pp. 2-3; EB Ex. 38; EB Ex. 46) [Bureau's P.F.F. para. 39.]* This unusual bit of testimony and associated proposed finding of fact further demonstrates the absurd quality of the Sumpter testimony and the Bureau's reliance upon it. The Bureau asserts that Ron brought four 800A form letters to the office, yet Jennifer claims to have earlier thrown hers away. (Tr. at 1081-1084.) How then did Ron obtain the four form letters, addressed to each of the Sumpters and mailed to their respective addresses? The Bureau fails to explain this anomaly or even recognize its existence. Further, the plain face of 800A executed by Norma demonstrates that Ron did not complete the information on the 800A. Upon the form the frequency is listed as "483,56250." (EB Ex. 46). Ron would know that one does not employ a comma in expressing a frequency. In sum, the totality of the facts do not support the Bureau's contention.

82. *At that time, Ronald did not explain to Jim and Norma that they had to sign both an 800A and an Assignment of Authorization (a/k/a 1046) Form prior to the transfer of a station. (Tr. 1979; 2234) [Bureau's P.F.F. para. 40.]* The Bureau fails to employ the entire record in addressing Norma's contradictory testimony at Tr. 2064. Norma testified that Jim knew upon signing the Form 800A that this was not a full transfer. (Tr. at 2063-2065.) Ron brought documents by Jim's office for each Sumpter to sign. (Tr. at 2062.) Norma took Jim's to him in his office. (Tr. at 2063.) "He looked at it, and he told [Norma] it was not a transfer." (Tr. at 2064.) Furthermore, before signing Jim and Ron had a conversation that the 800As "were not transfers", but that "[they] had to sign them to get the transfers through." (Tr. at 2064.) This court may note the anomaly in the proposed findings of fact regarding the 800As, and that even the Sumpters' testimony demonstrates that the Bureau's recitation of the evidence is in serious error.
83. *After signing their 800A forms Jim and Norma realized that they were not "transfer" forms. (TR. 1964-66; 2191-92) [Bureau's P.F.F. para. 40.]* This is an inaccurate statement of the facts as they appear on the record. As noted above (paragraph 82), Jim and Ron had a conversation before Jim signed the Form 800A wherein Ron explained to Jim that it was not a full transfer. (Tr. at 2063-2064.) The Bureau's attempt to suggest that Ron was not forthcoming with the Sumpters and that the Sumpters were, therefore, duped into signing the 800As, is silly – particularly in view of the fact that the Bureau earlier claims that Jim and Norma's stations were, indeed, constructed. Accordingly, the statements made within the 800As signed by Jim and Norma were accurate.

84. *Consequently, on December 20, 1997, Jim and Norma sent letters to Ronald and Patricia in which they again asked that their names be removed from the licenses. (EB Ex. 40; EB Ex. 48) [Bureau's P.F.F. para. 40.]* In using the term "consequently", the Bureau is asserting that the reasoning for Jim and Norma's delivery of the letters was that they realized the Form 800A's were not transfer forms. This is an inaccurate conclusion. According to Norma, the purpose of sending the letter was the concern that they should not have signed the Form 800A's and that "[they] just let Ron know how [they] felt about it." (Tr. at 2068.)
85. *Shortly thereafter, Ronald called Jim, demanding that Jennifer and Melissa return executed 800A forms to him, and told Jim that Jennifer and Melissa were in "big trouble." (Tr. 1964) [Bureau's P.F.F. para. 41.]* The Bureau mis-characterizes Jim's testimony. Jim never testified that a "demand" was made by Ron that Jennifer and Melissa return the executed 800A's. Also, this call was not made to Jim "shortly thereafter" the Sumpters signed the Assignment of Authorization forms. This conversation took place five (5) months after the signing of these forms. (Tr. at 1964.)
86. *Consequently, he advised Melissa and Jennifer not to sign the 800A forms, and he sought legal counsel regarding this matter, (Tr. 1964-65; EB Ex. 38; EB Ex. 46).* [Bureau's P.F.F. para. 41.] This assertion is contrary to the record testimony. Jim's statements in EB Ex. 37 p. 3 suggest that he advised the girls not to sign the Form 800A's in December of 1997. According to Jim's testimony, however, Ron's "threatening" phone call occurred in May of 1998. (Tr. at 1964.) Therefore, the Bureau's assertion that Jim advised the girls not to sign after Ron's "threatening" phone call is simply false.

Furthermore, Jennifer's testimony indicates that she received no advice from Jim regarding the signing of the Form 800A. Rather, she told Jim that she was not going to sign it "under advisement from [her] colleague at work." (Tr. at 1084.) The end result of the evidentiary debacle and the resulting mis-paraphrasing by the Bureau is that not only does the testimony not support the proposed finding, but the testimony itself is contradictory. As it stands, the statement is merely Bureau testimony without evidentiary support.

87. *Jennifer and Melissa had previously discarded the 800A forms that they had received from the Commission. (Tr. 1081-83; 1325-26; EB Ex. 52, pp. 1, 8; EB Ex. 55, pp. 2, 9).* [Bureau's P.F.F. footnote 10.] The Bureau here attempts to state as fact something unsupported by the record as it offers no evidence that Melissa discarded her Form 800A.
88. *She and Jim kept that letter but did not discuss it with anyone from DLB. (Tr. 1060-63)* [Bureau's P.F.F. footnote 10.] The relevant citation is Tr. 1062. The other pages cited have nothing to do with this statement. The point of the sentence is wholly unclear and begs the question as to how Jennifer and Jim shared joint custody of the subject letter.
89. *Another of Patricia Brasher's sisters, Carolyn Sue Lutz, worked for DLB when DLB was expanding in 1996. (EB Ex. 63, **EB Ex. 64** Tr. 1137, **1163**).* [Bureau's P.F.F. para. 43.] The Bureau's use of the phrase "when DLB was expanding in 1996" is vague and fails to specifically define the time period to which the Bureau refers. The Bureau also erroneously implies that Ms. Lutz was employed by DLB during all of 1996, even though Ms. Lutz stated in her testimony that she left DLB in May 1995 only to return again to DLB in May 1996. (Tr. at 1132-1134, 1285).

90. *Ronald approached Carolyn and asked her to apply for a license, and she agreed to do it as a favor to Ronald (Tr. 1162, 1167) [Bureau's P.F.F. para. 43.]* The record does not support a finding that Mrs. Lutz applied for a license as a favor to Ron. Ms. Lutz states that if she applied for a license, "in return...[Ron] would give me a phone in my car." (Tr. at 1162). Furthermore, while Ron did approach Ms. Lutz and ask her to apply for a license, the Bureau fails to acknowledge testimony by both Ron and Pat that Ms. Lutz approached Pat initially and asked Pat if she (Ms. Lutz) could also have a license in her name. (Tr. at 542, 831.) Pat then asked Ron to ask Ms. Lutz if she would apply for a license to "smooth the feelings there, that it didn't seem like Pat was forcing [Ron] to do it." (Tr. at 542.) The totality of the record considered, it is apparent that Carolyn initiated the activities which resulted in her license or that the Bureau failed to recognize and report the contradictory testimony in its proposed finding of fact.
91. *Carolyn gave Ronald and Patricia permission to "use" her name, but Carolyn did not have any involvement with the station licensed to her. (Tr. 1191-93) [Bureau's P.F.F. para. 43.]* The record does not support a finding that Ms. Lutz had nothing to do with her station. Her involvement is evidenced by the fact that in 1998 Ms. Lutz attempted to renegotiate the terms of a written agreement with Ron regarding the management of her station. (Tr. at 495-496, 549-551, 1261; RB/PB Ex. 1.) Additionally, the Bureau has stated time and again that "DLB personnel" operated and maintained the station. The Bureau's obvious attempt to attribute to DLB all actions taken related to the T-band facilities works as a contradiction to this proposed finding of fact. Since Carolyn was a

member of the DLB personnel, the Bureau has already admitted that she participated in the operation and maintenance and loading of her station.

92. *Likewise, in the early 1990s, Carolyn had signed an application for a 900 MHz license when asked to do so by Ronald. (Tr. 1158) [Bureau's P.F.F. footnote 11.] The Bureau fails to mention that in the early 1990s, when Ron asked Ms. Lutz to sign an application for a 900 MHz license, he offered to put "a two way radio with a telephone interconnect capability in [Ms. Lutz's] car, and if [she] wanted it, he could put one in [her] husband's, in [her children's] car" in reflection of Ms. Lutz's applying for the license. (Tr. at 1158.) Therefore, the intent to install end user mobile units in the vehicles necessitated the application and the Bureau's "cart and horse" problem is solved.*
93. *Carolyn was never asked to pay expenses related to the station, nor did she assume any financial risk in connection with her 1996 license. (Tr. 817; 1191-93, 1201-02). [Bureau's P.F.F. para. 44.] The economic condition of DLB had a direct and tangible effect on Carolyn as well as all of the Brashers and Sumpters.*
94. *Carolyn did not receive any compensation for signing the assignment application. (Tr. 1176-78) [Bureau's P.F.F. para. 46.] Ms. Lutz did not testify that she did not "receive" compensation for signing the assignment application, rather she testified that she was never "promised" anything and that she didn't "expect" anything. (Tr. at 1177.)*
95. *In this regard, Carolyn had a single radio-phone in her car while she worked for DLB, which was installed, at Patricia's suggestion, so that Patricia could reach Carolyn when Carolyn was running errands, and which DLB removed after Carolyn ceased working for DLB in September 2000. (Tr. 514; 1159-60) [Bureau's P.F.F. para. 46.] The Bureau's*

use of the phrase “in this regard” implies that this sentence is related to the previous sentence. However, Ms. Lutz’s use of a car phone is unrelated to Ms. Lutz signing an assignment application. The phone was installed at Pat’s suggestion, but only after Pat was surprised to learn that Ms. Lutz did not already have a phone installed in her car in accordance with Ms. Lutz’s previous arrangement with Ron. (Tr. at 1159-1160 .)

Furthermore, the Bureau improperly suggests that the radio-phone was installed so that Pat could reach Ms. Lutz. This suggestion is not supported by the record. Ms. Lutz testified that the phone was more or less used for business purposes by office personnel and service personnel to contact her (Tr. at 1159, 1177-1179), not just by Pat. Also, the Bureau fails to mention Ms. Lutz’ acknowledgment that she used this phone for personal use as well. (Tr. at 1179.)

96. *The list of names for 1996 applications that Ronald sent to John Black included David Brasher with an address of 2910 West Bend Dr., Irving, Texas 75063-3113, and D.L. Brasher with an address of 222 Molina Dr., Sunnyvale, Texas 75182. (EB Ex. 19, p. 229; EB Ex. 66). [Bureau’s P.F.F. para. 47.]* The citations offered by the Bureau in support of this sentence merely shows that a list was sent to John Black. Nothing cited to by the Bureau indicates that it was Ron that sent the list. Further, the Bureau has not cited to any rule which precludes an applicant’s use of initials or multiple mailing addresses, despite the obvious inference to the contrary.
97. *To accommodate his father (Ronald), David applied for two licenses to operate two Allen site repeaters under the names David L. Brasher and D.L. Brasher, using the two different addresses noted above. (Tr. 933-34) [Bureau’s P.F.F. para. 47.]* The Bureau

fails to employ the entire record as to why David applied for the two licenses. David did apply to accommodate his father's request, but he further testified as to his desire to make the licenses an asset of his estate, and to increase the value of the business that he was eventually going to join. (Tr. at 933-934.)

98. *David testified that the reason he filed applications in two different names with two different addresses was to try to hide assets from his wife and from the divorce court in the event of a divorce. (Tr. 1034-35) [Bureau's P.F.F. para. 47.] The Bureau mischaracterizes David's testimony with regard to this matter in a thinly veiled attempt to create an impression of David as a deceitful person. In no way does David's testimony indicate that it was his intent to "hide" the asset from his wife or a divorce court. As David's testimony reveals, he and his wife were having marital difficulties and he wanted to have at least one license that wasn't part of the estate of David and Diane Brasher. (Tr. at 1035.) By having the license registered to another address, David thought that he would be able to keep that asset from being included as a joint asset in a divorce proceeding if such a proceeding went that far. (Tr. at 1035.) David believed that this was a way that it could be done, but has since been told differently. (Tr. at 1035.) What the record testimony shows, therefore, is that David, like Ron and Pat, lacks sophistication regarding legal matters.*
99. *At the time his applications were filed, David worked full-time for IBM as a manager at a data center. (Tr. 906, 996) [Bureau's P.F.F. para. 47.] Although David worked full-time at IBM, he was vice president of DLB from the time of its inception. (Tr. at 907.) Therefore, he was vice president at DLB during the time of the filing of the applications*

referenced. When the licenses were granted in September of 1996, David had already begun to contemplate leaving IBM to go to DLB full-time. (Tr. at 997.) In view of the total record, the Bureau's point, if existing, is fully lost.

100. *On that same day, Ronald sought the assignment of Station WPJR750 from D.L. Brasher to DLB. (EB Ex. 20, in particular, see pp. 3, 12, 22) [Bureau's P.F.F. para. 48.]*

The Bureau's errant citation results in the Bureau's testifying improperly without cited evidentiary support. The date proffered by the Bureau does not accurately reflect the record.

101. *Notwithstanding that David L. Brasher and D. L. Brasher are the same person, the signatures differ and the applications were signed on different dates. (Compare EB Ex. 20, p. 11, with EB Ex. 20, p. 12). [Bureau's P.F.F. para. 48.]* The Bureau fails to offer any evidence, especially testimony by its own handwriting expert, that the signatures appearing on these documents were signed by any party other than David Brasher. The Bureau is not an expert witness in this matter and is attempting to testify as to the differences in the signatures without providing an opportunity for opposing counsel to cross-examine. As the Bureau has attempted to introduce new evidence into the record after the record has been closed, the sentence should be stricken.

102. *In addition to the licenses already discussed, Ronald used his brother-in-law, Thomas Lewis ("Thomas"), to obtain the license for Station WPIR456. (Tr. 683-86, 690, 699; EB Ex. 65) [Bureau's P.F.F. para. 49.]* The Bureau is, in essence, offering a conclusion of law by stating that it was Ron, and not Lewis, who obtained the license. As dictated by the Court in this matter, conclusions of law should not be intermingled into the Proposed

Findings of Fact. (Tr. at 2451.) Furthermore, the facts do not support a finding that it was Ron who “obtained” the license. The Bureau fails to reveal that Ron never utilized this license, nor benefitted from its operation. (Tr. at 532.) Ron only held a photocopy of the Lewis license. (Tr. at 531.) Finally, the Bureau’s gratuitous employment of the word “used” is needless editorializing without supportive testimony.

103. *Although Thomas’ license is not a T-band license, the facts and circumstances surrounding this license further evidence DLB’s pattern of abusive and deceptive conduct using surrogates to obtain licenses for its use.* [Bureau’s P.F.F. para. 49.] The Bureau offers no citation to testimony or evidence of record to support this statement. The Bureau is, once again, including a conclusion of law within its findings of fact in direct contradiction to the directions given by this Court. (Tr. at 2451) The Bureau is improperly testifying as to the quality of its alleged evidence and the conclusions which it believes should be drawn.
104. *Moreover, while Thomas paid the renewal fee, Ronald reimbursed him.* (EB Ex 65, p. 4; Tr. 688-89, 730, 741-42, 747-48) [Bureau’s P.F.F. para. 49.] The Bureau fails to employ the entire record. To establish this as a fact, the Bureau relies solely on Lewis’ testimony that Ron reimbursed him. The Bureau neglects to address Ron’s contradictory testimony regarding this matter. (Tr. at 532.)
105. *In 1994, 1996, 1997 and 1998, Ronald and Patricia knew, with respect to applications which concerned or resulted in Stations KCG967, WPJR761 and WPJR762, but did not make known to the Commission, that O.C. Brasher and Ruth Bearden (Brasher) were dead.* (EB Ex. 3, p. 4; EB Ex. 6; EB Ex. 9, p. 4; EB Ex. 12; EB Ex. 13, p. 5; EB Ex. 20,

- p. 10; EB Ex. 21, p. 24; RB/PB Ex. 3; Tr. 171-72, 220, 222; 784-86). [Bureau's P.F.F. para. 51]. It is at odds with the record for the Bureau to assert that Ron and Pat failed to make known to the Commission that O.C. Brasher was deceased in 1994, when the record shows that O.C. did not die until 1995. (Tr. at 334, 345, 951; EB Ex. 6.)*
106. *Among other things, the Commission asked DLB to explain the licensees' roles in supervising DLB's management of their respective stations. [Bureau's P.F.F. para. 53.]*
- The Bureau not only fails to provide a citation to support its alleged facts, but also misstates the facts of record. In the inquiry, the Commission asked DLB to explain the licensees' roles in supervising "Ron Brasher's" (not DLB's) management of their respective stations. (EB Ex. 16 at 2.) Therefore, the Bureau is only belatedly attempting to subscribe all relevant actions to DLB and formerly focused on the actions of Ron.
107. *Among other things, Ronald stated at pages 2 and 3: "Each licensee was to be, and was, informed of the date of construction and placing in operation so that the licensee could file a timely report with the Commission.... Each licensee retained its right to sell, transfer, remove from management, or cancel its license at any time." (EB Ex. 17, pp. 2-3) [Bureau's P.F.F. para. 54.]* The Defendants note that Ms. Lutz, Mr. Lewis, and each individual Sumpter retained these rights. As the record shows, upon dissatisfaction with DLB and the trouble cause by the Net Wave Petition, Jim, (Tr. 1783; EB Ex 20 p. 17, EB Ex. 39, EB Ex. 40), Norma, (EB Ex. 47, EB Ex. 20 p. 19), Melissa, (Tr. 439-441, 1328-1329; EB Ex. 20 p. 18, EB Ex. 52 p. 10, EB Ex. 53), Jennifer, (Tr. at 1063, 1092, 439-441; EB Ex. 20 p. 16, EB Ex. 56), Mrs. Lutz, (Tr. at 1173; EB Ex. 20 p. 15, EB Ex. 61), and Mr. Lewis, (Tr. at 701) requested that the licenses be transferred out of their names.

Melissa and Jennifer each exercised their individual rights in causing the cancellation of their licenses. (Tr. at 1062, 1330; EB Ex. 52 at 12.) And, in accord with the *Lutz* decision (cited below) the licensees were capable of causing the cancellation of each of their licenses.

108. *Likewise, on page 5, Ronald states that “[e]ach applicant and licensee was responsible for reviewing and signing its own application in connection with the Managed Stations.” (Id., p. 5, answer 2(d). [Bureau’s P.F.F. para. 54.] It is undisputed that Ms. Lutz, (Tr. at 1163; EB Ex. 57), Mr. Lewis, (Tr. at 683, 690), and O.C. while he was alive, (Tr. at 335; EB Ex. 68), reviewed and signed their own applications. It is further noted that Ron, believing that he had authority as executor of O.C.’s and Ruth’s estates, reviewed and signed their names to applications on behalf of the respective estates. (Tr. at 301, 348, 602-604.) As for the Sumpters, Ron assumed that each Sumpter had individually reviewed and signed their applications. Ron and Pat picked up the signed applications from Jim’s office, noticed that they were each signed, and then mailed the applications to PCIA. (Tr. at 421, 422-424, 427, 822.) Ron had no reason to believe that each Sumpter did not individually review and sign his or her application, “there wasn’t any reason to ask that question.” (Tr. at 427.) Accordingly, the statement made by Ron, when made, reflected his reasonable knowledge and belief.*
109. *DLB’s response, as later clarified by Ronald’s testimony, also suggested that O.C. had signed a management agreement with DLB. In fact, Ronald had signed O.C.’s name to the agreement. (EB Ex. 5; EB Ex. 19, pp. 500-11; Tr. 348-56). [Bureau’s P.F.F. para. 55.] Although Ron did testify that he signed O.C.’s name to the management agreement,*

the Bureau offers no evidence to support its statement that DLB's response suggested that O.C. signed the management agreement. The Bureau fails to employ the entire record as to why Ron signed O.C.'s name. The record shows that Ron was under the belief that he could sign the management agreement for O.C.'s license on behalf of O.C.'s estate under the durable power of attorney. (Tr. at 348.) Additionally, the offering of the management agreements was, as is clearly shown by the record, intended only for the purpose of illustration and not for the purpose of demonstrating that the person represented by the management agreement indeed signed the document.

110. *However, apparently on the same day, O.C. also executed the cancellation clause contained in the power of Attorney, something Ronald claimed not to have noticed. (Tr. 606-07) [Bureau's P.F.F. para. 56.]* The Bureau misstates the testimony given by Ron as to O.C.'s execution of the cancellation clause. Ron testified that he noticed the cancellation clause signed by O.C., but that at the time of its execution "did not understand what that even meant." (Tr. at 606-607.) The Bureau's suggestion is at odds with the condition of the witness who has fully demonstrated a lack of legal acumen.
111. *However, in response to the Bureau's request for a copy of the court order, Ronald produced a 1989 application to be appointed guardian of O.C. Brasher and then testified that he did not know whether there had been an order appointing him executor of O.C.'s estate. (EB Ex. 69, pp. 231-240). [Bureau's P.F.F. para. 56.]* The Bureau misstates the testimony it cites in support of this statement. The record indicates that Ron supplied the Commission with an application to be appointed guardian. (EB Ex. 7.) However, there is no testimony cited by the Bureau that indicates Ron did not know whether there